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May 12, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: January 25, 2006

Case Number: TSO-0345

This Decision concerns the eligibility of xxxxxxxxxxxxxxxx ("the Individual") for continued access authorization. This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, access authorization should be granted to the Individual. For the reasons detailed below, it is my recommendation that access authorization not be granted at this time.

I. APPLICABLE REGULATIONS

The regulations governing an individual's eligibility for access authorization (also "security clearance") are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." An individual is eligible for access authorization if such authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). "Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." *Id. See generally Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988) (the "clearly consistent with the interests of national security" test indicates that "security-clearance determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990) (strong presumption against the issuance of a security clearance).

If a question concerning an individual's eligibility for a clearance cannot be resolved, the matter is referred to administrative review. 10 C.F.R. § 710.9. The individual has the option of obtaining a decision by the manager at the site based on the existing information or appearing before a hearing officer. *Id.* § 710.21(b)(3). The burden is on the individual to present testimony or evidence to demonstrate that he is eligible for access authorization, i.e., that access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." *Id.* § 710.27(a).

II. BACKGROUND

This proceeding commenced when, by letter dated November 23, 2005 (the Notification Letter), the local security office (LSO) informed the Individual that it possessed derogatory information that created a substantial doubt as to the Individual's continued eligibility for an access authorization under 10 C.F.R. § 710.8, paragraphs (h)¹ and (j)². *Attachment, Notification Letter dated November 23, 2005 (Notification Letter)*. The letter advised the Individual of his right to request a hearing in the matter and he did so on December 15, 2005. The Office of Hearings and Appeals (OHA) received the request on January 25, 2006, and I was appointed to serve as Hearing Officer.

The Individual is employed by a contractor at a DOE facility in a position that requires him to have an access authorization. According to the Notification Letter, LSO possesses information which indicates the Individual is or has been

. . . a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse. His alcoholism is an illness or mental condition which in the opinion of a psychiatrist, causes or may cause, a significant defect in the judgment or reliability of [the Individual]. This behavior is subject to the provisions of Title 10, Code of Federal Regulations (10 CFR), Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material," Section 710.8, paragraphs (h) and (j).

Notification Letter attachment at 1.

As support, the attachment to the Notification Letter enumerates the Individual's known alcohol difficulties and related matters from 1981 to the present, including the results of a two psychiatric examinations. In his December 15, 2005 request for a hearing the Individual responded to the allegations in the Notification Letter. For clarity, the items are first, the allegations of the Notification Letter, and then the response of the Individual – in italics -- taken from his December 15 hearing request.

- A. On July 8, 2005 . . . a DOE-consultant psychiatrist, evaluated [the Individual and concluded that he] met the *Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition Test Revision (DSM-IV TR)* criteria for two illnesses: Delusional Disorder, Pathological Jealousy or Alcohol-Induced Delusional Disorder, which

¹ (h) An illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.

² (j) Been, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.

causes, or may cause, a significant defect in judgment or reliability. Additionally, he has been, or is, a user of alcohol habitually to excess, and probably is in the early, pre-clinical stage of alcohol dependence.

Individual: *I affirm that I met with . . . a DOE consultant psychiatrist, for evaluation on . . . July 27, 2005³.*

- B. On December 16, 1994 . . . a DOE consultant-psychiatrist, evaluated [the Individual and] . . . concluded that [he] met the *Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition Text Revision (DSM-IV TR)* criteria for Substance Abuse, Alcohol, and for Delusional Disorder, Jealous Type or Alcohol-Induced Delusional Disorder, Pathological Jealousy which causes, or may cause, a significant defect in judgment and reliability. [The psychiatrist] recommended [the Individual] as a candidate for the Employee Assistance Program Referral Option (EAPRO) and advised him not to drink any alcohol. However, during a personnel security interview (PSI) conducted on March 30, 2004, he admitted that he resumed drinking alcohol a few months after completing the EAPRO program in 1997, despite being told by [the psychiatrist] that he should never drink alcohol.⁴

Individual: *I affirm that I met with . . . a DOE consultant psychiatrist, for evaluation on . . . December 16, 1994.*

- C. Information in the possession of the DOE indicates that [the Individual] has had the following alcohol-related incidents.
1. On August 25, 2003, the . . . Sheriff's Department . . . and the . . . Police Department . . . identified him as a suspect in a Battery incident. [One] report indicated that an odor of alcohol was detected . . .

Individual: *I deny all allegations of this report.*

2. On July 15, 1994, the . . . Sheriff's Department, arrested and charged him with Domestic Violence and the . . . Sheriff's Department subsequently served him with a Restraining Order. [The Individual] had been drinking prior to the incident.

Individual: *I take full responsibility for my actions that occurred on this date.*

³ July 27th is the date of issuance of the DOE-sponsored psychiatrist's report of the July 8th interview with the Individual.

⁴ The same DOE consultant-psychiatrist conducted each examination.

3. On June 14, 1991, the . . . Police Department . . . arrested and charged him with Negligent Use of a Deadly Weapon. He also had a full can of beer in the vehicle with him at the time of the arrest.

Individual: *I take full responsibility for the charges.*

- D. DOE is in possession of the following information regarding his alcohol use.

1. On February 5, 1995, [the EAPRO employee] who counseled [the Individual] during EAPRO, indicated that his problems go beyond just alcohol, because alcohol does not cause excessive jealousy.

Individual: *I affirm that I sought counseling with [the] counselor.*

2. On August 24, 1994, as part of his court-ordered treatment for anger management, [the Individual] was advised to receive treatment for addiction to alcohol. Despite this advisement, he did not follow through with the counseling or treatment.

Individual: *I deny these allegations, I did seek treatment . . .*

3. In [a personnel security interview] on September 14, 1993, he admitted to seven or eight incidents of domestic violence with his former spouse between 1981 and 1991, which left visible bruises on her arms and face. Due [to] his abuse, she had to have a blood clot surgically removed from her brain in 1982. He also admitted to seven or eight incidents of domestic violence with his current girlfriend, leaving visible bruises on her arms. Moreover, he acknowledged that alcohol was a factor in each of the incidents of domestic violence.

Individual: *I take full responsibility for my actions toward my former spouse, from 1981 to 1991, but will not assume responsibility for the blood clot that was surgically removed from her brain in 1982. My former wife was born with a brain defect that contributed to the blood clot.*

I also take full responsibility for the incidents that were reported with my girlfriend who is now my wife.

Notification Letter attachment at 1-3 and December 15, 2005 Request for Hearing.

The same DOE-consultant psychiatrist examined the Individual in 1994 and in 2005. The doctor's analysis, conclusions and recommendations of the 2005 report are more detailed than those of the 1994 report, but otherwise substantially the same. One important difference is that, based upon a normal liver enzyme report, the 2005 Report finds "that

there is very strong evidence that the subject is not drinking as much now as he was in 1994.” *DOE-Consultant Psychiatrist Report dated July 27, 2005 (the 2005 Report) at 23.*

In response to questions posed by DOE⁵ – in brief – the psychiatrist answered that, yes, the Individual *has been* a user of alcohol to excess but did not diagnose the Individual as dependent in 2005. As to adequate evidence of rehabilitation or reformation, the psychiatrist answered no, there is not. The bases for this lie in the Individual’s continuing use of alcohol and “the relationship of alcohol to his propensity to violence and pathological jealousy.” *The 2005 Report at 26.*

As to what length of time and type of treatment would be necessary for adequate evidence of rehabilitation or reformation, the psychiatrist answers that for rehabilitation the Individual can either:

Produce documented evidence of attendance at Alcoholics Anonymous (AA) with a sponsor and working on the 12 steps at least once a week for a minimum of 100 hours over at least a year’s time and be abstinent from alcohol . . . for a minimum of two years.

or

Satisfactorily complete a professionally run, alcohol treatment program, either inpatient or outpatient, including aftercare, for a minimum of six months and be abstinent from alcohol and all non-prescribed controlled substances for a minimum of three years.

The 2005 Report at 26.

For adequate evidence of reformation the psychiatrist posed two options:

If the subject goes through one of the two rehabilitation programs above, then a minimum of two or three years of abstinence from alcohol and all non-prescribed controlled substances is necessary to show adequate evidence of reformation.

If the subject does not go through one of the two rehabilitation programs above, then a minimum of five years of abstinence from alcohol . . . is necessary to show adequate evidence of reformation.

Any future use of alcohol . . . will be evidence that the subject is no longer showing adequate evidence of reformation.

⁵ The questions the DOE-consultant psychiatrist was asked to address were: **a.** Has the subject been or is the subject a user of alcohol habitually to excess or is he alcohol dependent or suffering from alcohol abuse? **b.** If so, is there adequate evidence of rehabilitation or reformation? **c.** If not rehabilitated or reformed, what length of time and type of treatment would be necessary for adequate evidence of rehabilitation or reformation? **d.** Does the subject have an illness or mental condition which causes, or may cause, a significant defect in judgment or reliability? *2005 Report at 24-7.*

The 2005 Report at 26-7

The last question is “does the Subject have an illness or mental condition which causes, or may cause, a significant defect in judgment or reliability?” The psychiatrist’s diagnosis is that yes, he does. Except that the Individual is not now “suffering from alcohol abuse,” the diagnosis is the same as in the 1994 Report: “(E)ither the Delusional Disorder, Pathological Jealousy or Alcohol-Induced Delusional Disorder.” For adequate evidence of rehabilitation and reformation, the doctor opines that the Individual must refrain from using “alcohol to excess and . . . not (have) had any evidence of pathological jealousy for a minimum of ten years.” *The 2005 Report at 28.*

The event that precipitated this proceeding occurred August 25, 2003, and involved a roadside encounter with a man who worked with the Individual’s wife. The man claimed that the Individual physically assaulted him and filed a police report to that effect. Police reports concerning the event identify the Individual as a suspect in the battery incident. Those reports also say that the odor of alcohol was detected on the Individual’s breath. *DOE Exhibits Notebook Information Form, tab 2 at 2.* The Individual denies that there was any physical contact and asserts that he did not initiate the incident.

IV. THE HEARING

Attending the hearing were the Individual, DOE Counsel and the DOE-sponsored psychiatrist. The Individual called four witnesses: His supervisor and long-time co-worker, a long-time friend and co-worker, another very long-term friend and supervisor, and the Individual’s wife. On behalf of the Individual, DOE Counsel very effectively qualified and interviewed each witness and the Individual supplemented that procedure with his own questions, where desired.

Each of the first three witnesses has known the Individual for very long periods, i.e., from two to three decades. Each saw the individual regularly on the job and, less frequently, off the job. Each testified to the Individual’s reliability at work, his very calm and even demeanor, and his sobriety on the job and off. None had ever seen the Individual drunk or hung over on the job. As for drinking while not at work, each testified that they had only rarely seen the Individual take a drink and never seen him inebriated. *Transcript (Tr.) of Hearing at 24-52.*

The Individual’s wife of 10 years testified that he did not have a problem with alcohol, and that she had not seen him drink since two months before the hearing. She also testified that she had not seen the Individual drunk for many years, longer ago than she could remember. She stated that his habits were temperate -- only a couple of beers once or twice a week. Finally, she testified that the last incident of domestic violence between them was in 1994, and that both of them had taken part in treatments/counseling for anger over the ensuing two years. *Tr. at 53-73.*

Concerning the August 2003 roadside altercation with the wife's former co-worker, she testified that the Individual was not drinking that day. Other than that, she could testify only as to what the Individual had told her, namely, that there was no physical altercation and he did not initiate the event. *Tr. at 56-7.*

The DOE-sponsored psychiatrist testified to the substance and diagnoses of his two reports namely, that the Individual has been an alcohol abuser and has a Delusional Disorder, Pathological Jealousy or Alcohol-Induced Delusional Disorder. *Trans. at 112-3.* He also testified that there was a strong relationship between the Individual's alcohol use and violence. *Trans. at 113-5.* Also according to the psychiatrist, even though there was evidence that the Individual was no longer abusing alcohol and that there were no reported incidents of domestic violence in the last number of years:

(In) the incident in 2003, there was enough evidence that that was related to jealousy, in my opinion, that that was the kind of problem that could cause a significant defect in judgment or reliability, simply because, in a way, it was my worst prediction, that (the Individual) could be jealous about somebody that he works with, and, because [of the nature of his job] I thought that was potentially very dangerous to have those kind of feelings towards other males, and whether he hit the other male or not, (the August 25, 2003, incident, it) was still a verbal assault, an altercation, and so I wanted to see ten years with no evidence of that, and the best way to ensure that was don't drink and get into some kind of therapy or counseling to try to understand yourself better in that respect . . . Given the connection between alcohol and violence, my opinion is that, in order to show adequate evidence of rehabilitation or reformation, you can't drink at all . . . The fact that (the Individual is) still drinking, he's not showing adequate evidence of rehabilitation or reformation.

Tr. at 114-5.

The Individual's testimony – elicited largely by DOE counsel – explained the incidents of domestic violence, his experience in counseling after the 1994 incident, that he had stopped drinking alcohol during the counseling but resumed thereafter, and that he had now stopped drinking permanently. As for the August 25, 2003 incident, the Individual testified that he was tailgated on the way home from work by another vehicle, thought it was "his friend," and pulled over to the side of the road at which time he recognized his wife's former co-worker. At that point, he stated that words were exchanged but he did not get out of his car and there was no physical contact. He also stated that he had not been drinking the day of the incident and did not know why the other person had filed the police report. Finally, it was clear from the individual's testimony that he had not really read either of the two reports prepared by the DOE-sponsored psychiatrist, and had not read the record provided to the Individual in this proceeding. *Tr. at 74-103.*

IV. STANDARD OF REVIEW

A DOE administrative review proceeding under 10 C.F.R. Part 710 is authorized when the existence of derogatory information leaves unresolved questions about an individual's

eligibility for access authorization. A hearing is “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization.” 10 C.F.R. § 710.21(b) (6). Once DOE has presented derogatory information affecting an individual’s eligibility for access authorization, the individual must come forward with evidence to convince DOE that restoring his or her access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” *See, e.g., Personnel Security Hearing* (Case No. VSO-0013), 25 DOE ¶ 82,752 at 85,511 (1995), and cases cited therein. Any doubt regarding an individual’s eligibility for access authorization shall be resolved in favor of the national security. 10 C.F.R. § 710.7(a).

Applicable DOE regulations state: "The decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). In resolving questions about the individual’s eligibility for access authorization, I must consider the relevant factors and circumstances connected with the individual’s conduct, set out in Section 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; how recently and often the conduct occurred; the age and maturity of the individual at the time of the conduct; whether participation was voluntary; rehabilitation, reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

For the reasons discussed below, it is my opinion that the individual has not resolved the concerns in the Notification Letter, and should not be granted access authorization at this time.

V. OPINION

I will be brief. I thought the Individual was disengaged during the hearing. He had not read either of the two reports prepared by the DOE-sponsored psychiatrist and he had not read the record provided to him. Perhaps he had skimmed the material. One way or the other, he did not meet his burden of refuting or mitigating the charges of the Notification Letter. The Individual’s witnesses offered nothing concerning the main thread of the proceeding: Unreasoning jealousy and violent behavior frequently linked to alcohol. Against this the psychiatrist’s reports and recommendations of a dozen year’s standing -- along with the doctor’s direct testimony -- stand virtually unchallenged. The Individual claims he has stopped drinking, but that began only two months before the hearing. He also claims to have avoided violent behavior, but the 2003 incident and police report are not satisfactorily explained. Consequently, even giving all of the testimony of the Individual and his witnesses full credence, I still must defer to the psychiatrist’s diagnoses of unremediated “Delusional Disorder, Pathological Jealousy or Alcohol-Induced Delusional Disorder” and use of alcohol habitually to excess. I therefore have

no choice but to find that the Criteria H and J concerns set forth in the Notification letter are unresolved.

VI. CONCLUSION

The Individual has not resolved the Criteria H and J concerns set forth in the Notification Letter. Therefore, I cannot conclude that restoring the Individual's access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, the Individual's access authorization should not be restored.

The parties may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Richard T. Tedrow
Hearing Officer
Office of Hearings and Appeals

Date: May 12, 2006